

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SONDRA GARCIA,

Plaintiff,

vs.

CIV 00 0238 BB/LFG - ACE

JORGE L. CONDARCO and BRENDA
SMITH, in their individual capacities,
and THE CITY OF HOBBS,

Defendants.

**DEFENDANTS CITY OF HOBBS' AND BRENDA SMITH'S MOTION TO
DISMISS COUNT III OF PLAINTIFF'S COMPLAINT**

COME NOW, the Defendants, THE CITY OF HOBBS AND BRENDA SMITH, by and through their counsel-of-record, BEALL & BIEHLER, P.A., by Gregory L. Biehler, and hereby move this court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss Count III of Plaintiff's Complaint as Plaintiff fails to state a claim upon which relief can be granted. In support of Defendants' Motion, state the following:

1. Plaintiff, Sondra Garcia, alleges that, on June 6, 1998, she was sexually assaulted by Defendant, Jorge Condarco, a corrections officer at Hobbs City Jail, while being detained at Hobbs City Jail. *See Plaintiff's Complaint, ¶ 7-10.*

2. Plaintiff filed suit against Hobbs City Jail, Jorge Condarco, and Brenda Smith, Chief Detention officer at Hobbs City Jail alleging several causes of action. *See Plaintiff's Complaint.*

3. In Count III of Plaintiff's Complaint, Plaintiff alleges a violation of the Fair Housing Act, 42 U.S.C. 3601 et seq., against all Defendants. See *Plaintiff's Complaint at ¶ 24 –30*.

4. However, the Fair Housing Act is inapplicable to the case at bar because a jail is not a dwelling under the Fair Housing Act and, therefore Count III of Plaintiff's Complaint should be dismissed.

WHEREFORE, Defendants City of Hobbs and Brenda Smith respectfully request this Court to enter an Order dismissing Count III of Plaintiff's Complaint with prejudice, for costs and such other and further relief as the court may deem appropriate.

Respectfully Submitted,

BEALL & BIEHLER, P.A.

BY: _____
GREGORY L. BIEHLER
Attorney for Defendants
City of Hobbs and
Brenda Smith
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I hereby certify that a true and correct copy of the foregoing was mailed to:

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Bill J. Helwig, Esq.
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on this 23rd day of June, 2000.

BY: _____
GREGORY L. BIEHLER